Supreme Court, U.S.
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82-1910

No.

Supreme Court of the United States

October Term, 1982

ANCHOR MOTOR FREIGHT, INC.,
Petitioner,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION NO. 377,
Respondent,

vs.

TEAMSTERS FOR A DEMOCRATIC UNION, and STEPHEN KINDRED,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

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QUESTION PRESENTED FOR REVIEW

1. Has the United States Court of Appeals for the Sixth Circuit ignored the dictates of the *Steelworkers Trilogy* by determining the merits of a controversy the resolution of which was exclusively reserved to the grievance procedure contained in the parties' collective bargaining agreement?

PARTIES APPEARING BEFORE THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, Anchor Motor Freight, Inc. ("Anchor") was an Appellant and Cross-Appellee before the United States Court of Appeals for the Sixth Circuit in Case Nos. 81-3396 and 81-3410. Anchor was the Plaintiff in the United States District Court for the Northern District of Ohio, Eastern Division in Case No. C81-21Y.

Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 377 ("Union") was the Appellee and Cross-Appellant before the United States Court of Appeals for the Sixth Circuit and was the Defendant in the United States District Court for the Northern District of Ohio, Eastern Division in the Cases mentioned above.

Teamsters for a Democratic Union, and Stephen Kindred were Appellees before the United States Court of Appeals for the Sixth Circuit and were Third-Party Defendants in the United States District Court for the Northern District of Ohio, Eastern Division in the cases mentioned above.

STATEMENT OF CORPORATE AFFILIATION

Anchor Motor Freight, Inc. ("Anchor") is a Delaware corporation. It is a wholly-owned subsidiary of Leaseway Transportation Corp. Leaseway Transportation Corp. is a Delaware corporation and in addition to Anchor also owns the following subsidiaries:

A. J. Warehouse, Inc.
A. R. Gundry, Inc.
A & S H D Service Corp.
AMAC Trucking Incorporated
A to Z Cartage, Co.
Affiliated-Leaseway, Inc.
Akron Distribution Centers, Inc.
Akron Fleet Service, Inc.
Anchor Motor Freight, Inc.
Associated Consultants, Inc.
Automobile Carriers, Inc.
Balser Truck Co.
Bejin Trucking Company
Best Transport, Inc.
Better Home Deliveries, Inc.
Boston Deliveries, Inc.
Bulk Storage, Inc.
C & J Commercial Driveaway, Inc.
Charlton Transport (Quebec) Limited
Chicago Haulage, Inc.
Contract Trucking Corporation
Cooke Warehouses, Inc.
Courier Service, Inc.

Cryogenic Carriers, Inc.
Custom Deliveries, Inc.
Dedicated Freight Systems, Inc.
Electronics Transfer, Inc.
Elmhurst Maintenance, Inc.
Essential Trucking, Inc.
510 W. 21 St. Corp.
Fleet Maintenance, Inc.
Fleet Transport Company, Inc.
Fork Truck Leasing, Inc.
Fruit Belt Motor Service, Inc.
General Trucking Service, Inc.
Geo. McNeil Teaming Company
Gypsum Haulage, Inc.
Import Distribution Systems, Inc.
Industrial Personnel Corp.
LDF, Inc.
L M Leasing, Inc.
Leaseway of Arkansas, Inc.
Leaseway All-Services, Inc.
Leaseway of Chicago, Inc.
Leaseway Consolidators, Inc.
Leaseway Consultants Corp.
Leaseway Deliveries, Inc.
Leaseway of Detroit, Inc.
Leaseway Distribution Centers, Inc.
Leaseway-Empire, Inc.
Leaseway Finance Corp.
Leaseway Fleet Management Corp.
Leaseway Haulers, Inc.
Leaseway Hudson, Inc.

Leaseway of Illinois, Inc.
Leaseway Information Systems, Inc.
Leaseway International Corp.
Leaseway Investments, Inc.
Leaseway Leasing, Inc.
Leaseway Ltd.
Leaseway of Mississippi, Inc.
Leaseway Multi-Transportation Services, Inc.
Leaseway National Service Corp.
Leaseway of New England, Inc.
Leaseway of Ohio, Inc.
Leaseway Parts & Equipment, Inc.
Leaseway Park East Corp.
Leaseway of Pittsburgh, Inc.
Leaseway of Puerto Rico, Inc.
Leaseway Sewage Works Corporation
Leaseway-Southwest, Inc.
Leaseway Supplies Corp.
Leaseway System, Inc.
Leaseway Transfer Pool, Inc.
Leaseway Transportation Finance N.V.
Leaseway Transportation Leasing Corp.
Leaseway Transportation Leasing (Central) Corp.
Leaseway Transportation Leasing (Eastern) Corp.
Leaseway Transportation Leasing Corp. (Southern)
Leaseway Transportation Leasing Corp. (Western)
Leaseway Transportation Marketing Corp.
Leaseway Trucking, Inc.
Leaseway Warehouses, Inc.
Leaseway Warehouses of California, Inc.

Leaseway of Wisconsin, Inc.
Lightning Warehouses, Inc.
Logistics Resource, Inc.
M H D Services Inc.
Max Binswanger Trucking
Max Lyn Corp.
McLarty Leasing System, Inc.
Melchin Auto Transport Ltd.
Midwestern Distribution, Inc.
    B & D Motor Parts, Inc.
    Intermodal Systems, Inc.
Mission Leasing, Inc.
Mitchell Transport, Inc.
Motor Leasing New York Corp.
Motorcar Transport Company
Northern California Warehouse, Inc.
Northern Ohio Materials, Inc.
Ohio Truck Rental, Inc.
Pep Lines Trucking Co.
PHd Corporation
Pipeline Leasing Corp.
Quick Deliveries, Inc.
Ray Molder Carrier Corporation
Ray Molder, Inc.
Refiners Transport & Terminal Corporation
Regal Delivery Service, Inc.
Reserve Terminals Company
Santa Fe Delivery Service, Inc.
Savannah Service, Inc.
Signal Delivery Service, Inc.
S. W. Transportation Corp.

Stam-Win, Inc.
Sugar Transport, Inc.
Supplies, Inc.
T-I Company
Terminal Personnel, Inc.
Trac-Steel, Inc.
Trans Cleveland Warehouses, Inc.
Trans-Columbus Distribution Inc.
Transport, Inc.
Transportation Engineering Consulting Corporation
Transportation Engineering, Inc.
Transportation House, Inc.
Transportation Supplies, Inc.
Truck Maintenance, Inc.
Union Terminal Warehouse, Inc.
United Home Delivery, Inc.
Universal Leaseway System of Canada, Ltd.
Vehicle Leasing, Inc.
Vernon Equipment, Inc.
West Coast Leaseway System, Inc.
Westland Auto Terminals Ltd.

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TEAMSTERS FOR A DEMOCRATIC UNION, and STEPHEN KINDRED,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals For the Sixth Circuit

The Petitioner, Anchor Motor Freight, Inc., respectfully prays that a Writ of Certiorari issue to review that judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in the above-captioned matter, bearing Case Nos. 81-3396, 81-3410, on the 25th day of February, 1983.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit in Case Nos. 81-3396, 81-3410 is contained in the Appendix at pages A1 to A10.

The Opinion of the United States District Court for the Northern District of Ohio in Case No. 81-21Y is contained in the Appendix at pages A11 to A20.

The Judgment Entry of the United States District Court for the Northern District of Ohio in Case No. 81-21Y is contained in the Appendix at page A21.

The Judgment Entry of the United States Court of Appeals for the Sixth Circuit in Case Nos. 81-3396, 81-3410 is contained in the Appendix at pages A22 to A23.

STATEMENT OF JURISDICTION

The Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

> §1254. Courts of Appeals; certiorari; appeals; certified questions.
>
> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

STATUTORY PROVISION INVOLVED

Labor-Management Relations Act §301(a), 29 U.S.C. §185(a):

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Anchor Motor Freight (Anchor) is a contract motor carrier engaged in hauling automobiles for certain manufacturers. Anchor's employees are represented by Local 377 of the Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 377 (Union). A sixteen day wildcat strike took place at the Anchor Lordstown facility between the dates of June 10, 1979 and June 25, 1979. On June 11, 1979, a complaint was filed by Anchor in the United States District Court alleging that the union members were engaged in an unauthorized strike and requested that Court to enjoin the strike. A Temporary Restraining Order was issued on the same day ordering the strikers back to work. The strikers ignored the Order of the Court and on June 13 Anchor moved for an Order to Show Cause why the Union and the strikers should not be held in contempt. A hearing on the motion was held on June 15, 16 and 17. United States District Judge William K. Thomas delivered an oral opinion find-

ing certain union members in contempt of court but also stating that,

> ". . . It is determined that the Local took all available steps to abide by this Court's Order and the contract, and to attempt to persuade the members of Local 377 to return to work immediately.
>
> Also there is no evidence that Local 377 or the officers either initiated, fostered, or in any way encouraged or supported the work stoppage. . ."

The strikers continued to ignore the Order of the Court and a second show cause hearing was held on June 20. Following a bench opinion issued on June 25 finding certain strikers in contempt and imposing fines and imprisonment on the strikers for their refusal to comply with the Court Order, the strikers returned to work. Anchor filed a Motion to Dismiss its complaint on September 20, 1979 and subsequently, the action was dismissed with prejudice on September 28, 1979.

In accordance with the procedure delineated in Article 7, Section 2(b) of its collective bargaining agreement, Anchor submitted a grievance to the National Joint Arbitration Committee requesting money damages from Local 377 for failing to discharge their contractual duty of making immediate efforts to terminate the work stoppage. The grievance machinery contained in the collective bargaining agreement was exhausted when the Committee ultimately "deadlocked" the matter. Pursuant to the terms and conditions of the collective bargaining agreement, Anchor filed suit for damages on January 8, 1981 in the U.S. District Court for the Northern District of Ohio, Eastern Division. *See* Article 7, Section 2(b) on pp. 5-6.

The District Court granted the Union summary judgment on the basis that the prior contempt proceedings were *res judicata* relative to the issues raised in the damage suit and also held that there was no evidence from the contempt hearings which indicated that the Union supported, ratified, or encouraged the strike. The District Court also dismissed the Union's counterclaim for costs. Both Anchor and the Union appealed the decision to the United States Court of Appeals for the Sixth Circuit.

The Sixth Circuit reversed the District Court and remanded the proceedings. The Sixth Circuit held that the portion of Anchor's claim for damages resulting from the wildcat strike between the dates of June 17 and June 25 is not barred by *res judicata* or collateral estoppel. The Court also ruled that Anchor's claims for damages alleging that the union failed to immediately make every effort to persuade the strikers to return to work between the dates of June 11 and June 16, 1979 is collaterally stopped by Judge Thomas' oral opinion issued on June 17, 1979 in the contempt hearing. The Court also ordered the District Court to consider the Union's counterclaim.

REASONS FOR ALLOWANCE OF THE WRIT

The collective bargaining agreement in effect between the company and the union provides the exclusive procedure for resolution of damage claims arising from wildcat strikes. Here the Sixth Circuit Court of Appeals has permitted the District Court, through the application of the doctrine of collateral estoppel, to completely usurp that procedure and substitute its own judgment as to culpability for that process which is exclusively reserved to the grievance machinery contained in the parties' collective bargaining agreement.

In order to halt a wildcat strike which began on June 10, 1979, Anchor was required to file what is commonly known as a *Boys Markets* action.[1] The only relief requested in the *Boys Markets* complaint was the issuance of an injunction halting the work stoppage. When the striking employees refused to return to work after the T.R.O. was issued, the District Court, in considering a show cause order, ruled, "It is determined that the local, took all available steps to abide by this Court's Order and the contract, and to attempt to persuade the members of Local 377 to return to work immediately. Also there is no evidence that Local 377 or the officers either initiated, fostered, or in any way encouraged or supported the work stoppage. . ." The Sixth Circuit's ruling has permitted this gratuitous statement to preempt the availability of the grievance machinery specifically provided for in Article 7, Section 2(b) of the collective bargaining agreement to Anchor. Article 7, Section 2(b) of the collective bargaining agreement then in effect provided for

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1. *Boys Markets, Inc. v. Retail Clerks, Local 770*, 398 U.S. 235 (1970).

the exclusive method of recovering damages from a union which engaged in an unauthorized strike situation. Article 7, Section 2(b) provides:

> (b) *The question of whether the International Union, Teamsters National Automobile Transporters Industry Negotiating Committee, an Area Conference Joint Council or Local Union have met their obligation set forth in the immediately preceding paragraph* or the question of whether the International Union, Teamsters National Automobile Transporters Industry Negotiating Committee, an Area Conference, Joint Council or a Local Union, *separately or jointly, participated in an unauthorized* work stoppage, slowdown, walkout or cessation of work in violation of this Agreement by calling, encouraging, assisting or aiding in such stoppage, etc., in violation of this Agreement, or the question of whether an authorized strike provided by Article 7, Section 1 is in violation of this Agreement, or whether an Employer engaged in a lockout in violation of this Agreement *shall be submitted to the grievance procedure at the national level, prior to the institution of any damage suit action.* When requested, the Co-Chairmen of the National Joint Arbitration Committee shall immediately appoint a subcommittee to develop a record by collecting evidence and hear testimony, if any, on the sole question of whether the International Union, Teamsters National Automobile Transporters Industry Negotiating Committee, an Area Conference, Joint Council or Local Union have met their obligation as aforesaid or of Union participation or Employer lockout in violation of this Agreement. The record shall be immediately forwarded to the National Joint Arbitration Com-

mittee for decision. If a decision is not rendered within thirty (30) days after the Co-Chairmen have convened the National Committee, the matter shall be considered deadlocked.

A majority decision of the National Joint Arbitration Committee on the questions presented as aforesaid shall be final and binding on all parties. If such majority decision is rendered in favor of one or more of the Union entities, or the Employer, in the case of lockout, no damage suit proceedings on the issues set forth in this Article shall be instituted against such Union entity or such Employer. *If, however, the National Joint Arbitration Committee is deadlocked on the issues referred to in this subsection 2(b), either party may institute damage suit proceedings,* but the record of the National Joint Arbitration Committee and its Subcommittee shall not be offered in evidence by either party for any purpose. Except as provided in this subsection 2(b), agreement to utilize this procedure shall not thereafter in any way limit or constitute a waiver of the right of the Employer or Union to commence damage suit action. However, the use of evidence in this procedure shall not waive the right of the Employer or Union to use such evidence in any litigation relating to the strike or lockout, etc., in violation of this Agreement. There shall not be any strike, slowdown, walkout, cessation of work or lockout as a result of a deadlock of the National Joint Arbitration Committee on the questions referred to under this subsection 2(b), and any such activity shall be considered a violation of this Agreement. National Master Automobile Transporters Agreement, pp. 30-32 (emphasis added).

The above quoted language provides quite succinctly that before a damage action, such as the instant matter may be filed, the specified grievance procedure must be exhausted. The "shall" language quoted above makes usage of the grievance procedure mandatory. Therefore, quite simply, the issue of whether the Union complied with the dictates of Article 7 and is liable to Anchor in damages was never an issue before the District Court in the original *Boys Markets* action. Such a determination could only be made through the procedure specified in the collective bargaining agreement.

The employer believes the Union did not immediately *make every effort* to persuade the bargaining unit members to commence the full performance of their duties. Anchor did not file its request under Article 7, Section 2(b) until June 26, 1979. Hearings on Anchor's request were not heard until September and late November of 1979. Clearly, both of these dates occurred long after the original *Boys Markets* complaint was filed on June 11, 1979, and when Judge Thomas issued his ruling at the contempt hearings.

It is axiomatic that Judge Thomas' ruling in the *Boys Markets* matter cannot be considered as *res judicata* relative to the matters presented by Anchor to the grievance procedure and subsequently presented to the judiciary pending in the Complaint for damages. Further, the decision that Anchor is collaterally estopped from now raising these issues is equally sheer folly. It is well settled law that a court is not permitted to substitute its judgment for an arbitration tribunal where such form of dispute resolution is exclusively provided for in the collective bargaining agreement. The decision rendered by the Court of Appeals completely ignores the existence of Article 7, Section 2(b) which contains the exclusive grievance pro-

cedure cited above. Clearly, Judge Thomas' observation that the Union "took all available steps to abide by this Court's Order relative to the T.R.O." cannot preempt the exclusive grievance procedure contained in Article 7, Section 2(b) of the collective bargaining agreement. These issues must, in the first instance, be submitted to the grievance machinery contained in the collective bargaining agreement and that grievance procedure, not a Federal Court, will decide whether the Union comported itself in an acceptable manner under the applicable terms and conditions of the collective bargaining agreement.

To argue that parties to a collective bargaining agreement should be permitted to submit disputes to the judiciary for resolution prior to submitting them to the grievance procedure provided for as the exclusive means of dispute settlement is sophomoric at best. Clearly, the grievance machinery contained in the contract is to consider the matter in the first instance and if it is unable to render a decision, then either party *may* institute a suit for damages. To rule otherwise and allow the judiciary to dispose of a matter prior to it being submitted to the mandatory grievance procedure is completely improper under federal law.

The Supreme Court has consistently ruled that where the parties to a collective bargaining agreement have agreed to resolve disputes pursuant to a grievance procedure, the Court's role is limited to determining whether the issues before it are subject to the grievance procedure. *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

> Yet, to be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, *the judicial inquiry under §301 must be strictly confined to the question whether*

> *the reluctant party did agree to arbitrate the grievance or agreed to give the arbitrator power to make the award he made. An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage. United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960).

Thus, in the instant matter, if the issue of the Union's conduct as measured by Article 7 of the Contract was ever raised in the original *Boys Markets* decision, which Anchor expressly denies, the Court's role would have been limited to determining whether that issue was subject to the contractually mandated grievance procedure. If it was, then the role of the Court would be limited to ordering the dispute to the grievance procedure. The Court cannot substitute its judgment for that of the grievance machinery as was done here.

Clearly, by virtue of Article 7, Section 2(b), of the collective bargaining agreement issues concerning the Union's liability were exclusively subject to resolution through the grievance procedure. Thus, the Court's role would be limited to considering only those issues relative to the issuance and enforcement of an injunction. Here the Court did much more. It not only issued a T.R.O. and ruled on a show cause order, but if the Sixth Circuit's decision is sustained, the District Court was also permitted to render a "decision" which would ultimately preclude either party access to the grievance procedure which by argument of the parties was the sole method of resolving such disputes. The Supreme Court ruled quite succinctly in *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960):

The collective agreement calls for the submission of grievances in the categories which it describes irrespective of whether a court may deem them to be meritorious. In our role of developing a meaningful body of law to govern the interpretation and enforcement of collective bargaining agreements, we think special heed should be given to the context in which collective bargaining agreements are negotiated and the purpose which they are intended to serve. See *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 468. *The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is then confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract.* Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for.

The courts therefore have no business weighing the merits of the grievance,[5] considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those the court will deem meritorious. The processing of even frivolous claims may have therapeutic values [of] which those who are not a part of the plant environment may be quite unaware.[6]

* * * * *

. . . When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting

> the grievance procedure of collective bargaining agreements, it usurps a function which under the regime is entrusted to the arbitration tribunal. *Id.* at pp. 567-568 (emphasis added).

The issue, which is the subject of the instant suit, was never raised by the parties in the *Boys Markets* action. The sole method in which such an issue may be raised is by first filing a grievance and then allowing the dispute to proceed within the framework specifically established by the contracting parties. Here, however, by permitting Judge Thomas' observation in the T.R.O. contempt proceeding to completely prohibit Anchor access to the contractually mandated grievance procedure results in a situation wherein the dictates of the *Steelworkers Trilogy* are completely ignored. A Federal Court has been permitted to substitute its judgment for the contractually mandated grievance procedure contained in the parties' collective bargaining agreement. If the *Steelworkers Trilogy* is to remain as controlling law, such a decision may not stand. Anchor must be permitted a full and complete hearing on the merits of its claim which have been processed through the grievance procedure. Such a hearing may not be prejudiced by findings of a judge made prior to the submission of such claims to the grievance procedure.

The collective bargaining agreement between Anchor and the Teamsters Union imposes a specific duty upon the union in cases of an unauthorized work stoppage. That duty is to immediately make every effort to persuade the illegal strikers to return to work. A finding that the local union did not initiate, foster, or encourage the work stoppage does not rise to the level of conduct required by the union as set forth in Article 7, Section 2(b) of the collective bargaining agreement.

While such a finding may absolve a union of liability where no other contract provision defines the duty of the union, this is not the case here. Clearly, through the process of negotiation, the union agreed to be bound by the rigid standard of immediately taking affirmative steps to end the strike. This contractual standard calls for more than the abstention by the union from the instigation, support, ratification, or encouragement of an illegal strike. It is the nature of the steps, the immediacy of them, and the availability of other more effective efforts which could have been taken by the union which is the subject of the lawsuit for damages against the union during the period of the unauthorized strike from June 10, 1979 to June 25, 1979.

The Sixth Circuit has recognized the distinction between merely complying with a statutory duty of the union to refrain from authorizing, supporting, or encouraging a strike as opposed to a higher contractual duty to take action to end a strike in *United Steelworkers v. Lorain, A Division of Koehring Co.*, 616 F.2d 919 (6th Cir. 1980), *cert. denied,* 451 U.S. 983 (1981).

> A union may agree to assume a greater responsibility for ending illegal strikes than that imposed by law. *See* A. Cox, *Some Aspects of the Labor Management Relations Act,* 1947, 61 Harv. L. Rev. 274, 306 (1948). However, liability is not properly imposed in the absence of specific language so requiring. *Id.*, at 922.

In *Riverton Coal Co. v. United Mine Workers,* 453 F.2d 1035 (6th Cir.), *cert. denied,* 407 U.S. 915 (1972), the Court imposed liability on the union for its *inaction* in persuading its striking members who violated the no strike provisions of the contract to return to work and found that the union's "inaction was a form of influence and persuasion". *Id.*, at 1042.

Yet no indication appears from the brief opinion issued orally by the District Court on June 17, 1979 that the court gave full and fair consideration of the distinction between these levels of duty or that the issue of the union's conduct both prior to and throughout the strike was considered. Collateral estoppel may not be successfully raised unless there is an identity of issues in the two actions. *Cromwell v. County of Sac.*, 94 U.S. 351, 353 (1876); *International Wire v. Local 38, International Brotherhood of Electrical Workers*, 475 F.2d 1078 (6th Cir.), *cert. denied*, 414 U.S. 867 (1976). Collateral estoppel is inapplicable where the issue adjudicated in the earlier proceeding differs significantly from the issue presented in the later proceeding. *Metropolitan District Council v. J.E. Hoetger & Co.*, 672 F.2d 580, 583 (6th Cir. 1982).

Indeed, even if such issue were considered, it was a tangenital issue unnecessary to sustain the order of contempt issued on June 17, 1979. In order for the doctrine of collateral estoppel to operate as a bar to the litigation of claims or issues the factual or legal issues in question must have been both *actually litigated* in a prior proceeding and *necessary* to sustain the judgment. *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573 (1974); *Cream Top Creamery v. Dean Milk Co.*, 383 F.2d 358 (6th Cir. 1967). "[T]he principle[s] of res judicata [and collateral estoppel] do not apply to points which come under [a court's] consideration only collaterally or incidentally." *Norton v. Larney*, 266 U.S. 511, 517 (1925). *E.g., United States v. School District of Ferndale, Michigan*, 577 F.2d 1339, 1349 (6th Cir. 1978); *Paine & Williams Co. v. Baldwin Rubber Co.*, 113 F.2d 840 (6th Cir. 1940).

The sole issue before the Court in the proceeding culminating in the Judge's oral opinion on June 17, 1979

was whether the order of the court commanding the strikers to return to work was violated by the union or anyone else. It was unnecessary to the litigation involved in the contempt hearing to assess the nature and effectiveness of the union's actions or inactions in immediately persuading the strikers to return to work. "[A] decision on an issue not essential to the prior judgment may not have been afforded the careful deliberation and analysis normally applied to essential issues, since a different disposition of the inessential issue would not affect the judgment, *Halpern v. Schwartz,* 426 F.2d 102, 105 (2d Cir. 1970); *Paine & Williams Co. v. Baldwin Rubber Co.,* 113 F.2d 840 (6th Cir. 1940).

While the Sixth Circuit agrees that the issues involved in the injunction proceeding differ from the issue here, it nonetheless incorrectly barred the litigation of the portion of the claim regarding the union's conduct between June 11 and June 16 based upon the District Court Judge's oral findings issued on June 17, 1979. Any finding assessing the action or inaction of the union to affirmatively end the strike through immediate efforts, however, is tangential to the issue in the contempt hearing and it cannot be used to bar litigation of any portion of the relevant time period in this case.

CONCLUSION

The instant Petition contains a classic situation wherein the judiciary has completely ignored the dictates enunciated by the Supreme Court of the United States in the *Steelworkers Trilogy* and its progeny. Here a Federal Court unilaterally determined whether a union had complied with a standard of conduct prescribed in a collective bargaining agreement where such determination was exclusively reserved to a contractually mandated grievance procedure. The judiciary may not substitute its judgment for that process specified by the collective bargaining agreement as being the exclusive form of dispute resolution. However, Anchor has been denied its right to present evidence of the Union's breach of the collective bargaining agreement to the grievance machinery specified in the contract by virtue of the District Court's prior ruling. Such a total rejection of the rule delineated in the *Steelworkers Trilogy* must not be permitted to stand.

For all of the above reasons, the Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

OPINION OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

Nos. 81-3396, 3410

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

(Decided and Filed February 25, 1983)

ANCHOR MOTOR FREIGHT, INC.,
Plaintiff-Appellant,
Cross-Appellee,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION NO. 377,
Defendant-Appellee,
Cross-Appellant,

v.

TEAMSTERS FOR A DEMOCRATIC UNION, and STEPHEN KINDRED,
Third-Party Defendants-Appellees.

APPEAL From the United States District Court for the Northern District of Ohio.

Before: KENNEDY and WELLFORD, *Circuit Judges;* and BROWN, *Senior Circuit Judge.*

KENNEDY, *Circuit Judge.* Appellant Anchor Motor Freight, Inc. (Anchor) appeals from a summary judgment dismissing its complaint granted by the Honorable John

M. Manos, United States District Judge, Northern District of Ohio. Anchor's complaint alleged that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 377 (Union) had violated Article 7, Section 2 of the Collective Bargaining Agreement[1] by failing to "immediately make every effort"[2] to persuade its striking members to return to work. Local 377 appeals from the District Court's *sua sponte* dismissal of its counterclaim for damages (including attorney fees and costs) incurred in defending against appellant's action. Local 377 contends the action was brought in violation of an express term of the Collective Bargaining Agreement providing that Anchor would not bring suit. For the reasons set forth below, we affirm in part and remand for findings not inconsistent with this opinion.

Anchor is a contract motor carrier engaged in hauling automobiles. Local 377 represents various Anchor employees for purposes of collective bargaining. A wild cat strike began at Anchor's Lordstown, Ohio facility on June 10, 1979 and continued until June 25, 1979.[3] Anchor filed a complaint in the United States District Court for the Northern District of Ohio on June 11 under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, as amended, alleging that members of Local 377 were engaged in an unauthorized work stoppage and strike. Anchor, with the consent of Local 377, sought and obtained a temporary restraining order from the Honorable William K. Thomas, United States District Judge, Northern Dis-

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1. Although the Collective Bargaining Agreement was only expressly in effect for the period of June 1, 1976 through May 31, 1979, its coverage was extended beyond that time period by the mutual consent of the parties and, therefore, was controlling at the time of the events in question.

2. At this time we are not interpreting the Union's obligation under this provision of the Collective Bargaining Agreement.

3. Unless otherwise indicated, all events occurred in 1979.

trict of Ohio, mandating that the wildcat strikers return to work. The strikers failed to comply with the TRO and on June 13 Anchor moved for an order to show cause why they should not be held in contempt. A show cause hearing was held on June 15-16, and an order issued converting the TRO into a preliminary injunction. The strikers again did not comply with the provision of the preliminary injunction and Anchor moved for a second show cause hearing on June 20. Following hearings, Judge Thomas delivered a bench opinion on June 25 finding certain strikers in contempt and imposing fines and imprisonment for their failure to comply with the court's earlier order. Faced with those sanctions, the strikers returned to work. Accordingly, on September 20 Anchor filed a motion to dismiss the action pursuant to Fed.R.Civ.P. 41 on the grounds that changes in circumstances since the court's issuance of the preliminary injunction had rendered all issues moot and that there was no longer any relief for the court to grant. Local 377 consented to the motion and the action was dismissed with prejudice at Anchor's cost on September 28.

Anchor then sought to obtain money damages from Local 377 for its failure to have immediately made every effort to end the unlawful work stoppage. Pursuant to Article 7, Section 2(b) of the Agreement, Anchor submitted its grievance to the National Joint Arbitration Committee. A decision was not rendered within thirty days and the matter was considered "deadlocked," thereby allowing Anchor to institute this suit for damages. The instant action was filed on January 8, 1981 and the complaint was amended on January 26, 1981.

The District Court held that the prior show cause proceedings were res judicata on the issues raised in Anchor's complaint and granted Local 377's motion for

summary judgment. It also held that Local 377 was entitled to summary judgment because there was no evidence that the Union supported, ratified or encouraged the strike. The court further dismissed *sua sponte* Local 377's counterclaim for costs incurred in defending this action, which the Local contends Anchor filed in violation of its agreement not to sue. Anchor and Local 377 each appeal from the final order of the District Court.

I.

Res judicata bars a claim when (1) the same party or parties in privity with them were present in the prior litigation; (2) a court of competent jurisdiction has entered a valid, final judgment on the merits; and (3) the present action concerns the same subject matter or cause of action as the prior suit. *Sea-Land Services, Inc. v. Gaudet,* 414 U.S. 573, 579, *reh'g denied,* 414 U.S. 986 (1974); *Harrison v. Bloomfield Building Industries, Inc.,* 435 F.2d 1192 (6th Cir. 1970). This Court recently iterated a summary of the related doctrines of res judicata and collateral estoppel as set forth in *Montana v. United States,* 440 U.S. 147, 153-54 (1979).

> A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . . ." *Southern Pacific R. Co. Co. v. United States,* 168 U.S. 1, 48-49 [18 S.Ct. 18, 27, 42 L.Ed. 355] (1897). Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. [citations omitted] Under collateral estoppel, once

> an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. *Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 326 n. 5, 99 S.Ct. 645, 649 n. 5, 58 L.Ed.2d 552 (1970); Scott, Collateral Estoppel by Judgment, 56 Harv.L.Rev. 1, 2-3 (1942); Restatement (Second) of Judgments § 68 (Tent. Draft No. 4, Apr. 15, 1977) (issue preclusion). Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions. *Southern Pacific R. Co., supra,* 168 U.S. at 49, 18 S.Ct. at 27; *Hart Steel Co. v. Railroad Supply Co.,* 244 U.S. 294, 299, 37 S.Ct. 506, 507, 61 L.Ed. 1148 (1917). To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.

United States v. Stauffer Chemical Co., 684 F.2d 1174, 1180 (6th Cir. 1982).

The prior cause of action against the striking union members for violation of their no strike clause differs from the instant cause of action against the Union for violation of its agreement to immediately make every effort to persuade the unauthorized strikers to return to work. Local 377 was, however, entitled to dismissal of a portion of Anchor's claim under the closely related collateral estoppel doctrine on the basis of particularized findings of fact made by Judge Thomas in his bench opinion.

The June 17 bench opinion of the District Court held in pertinent part:

> *Before proceeding to discuss and decide these central issues, I desire to make certain findings as to Local 377:*
>
> The evidence indicates that on June 12, 1979, notices were posted by one or more officers of 377 at the Lordstown Terminal in conspicuous places, and further that by letters and telegrams to union members and committeemen and elected stewards, each of these persons was notified that the work stoppage was unauthorized and in violation of the no strike clause of the collective bargaining agreement.
>
> These notices and other communications also gave notice of the temporary restraining order which this Court had issued and in substance the content of it.
>
> *It is determined that the Local took all available steps to abide by this Court's order and the contract, and to attempt to persuade the members of Local 377 to return to work immediately.*
>
> *Also there is no evidence that Local 377 or the officers either initiated, fostered, or in any way encouraged or supported the work stoppage.* Indeed, I should say as an aside, I think the fact they didn't is one of the points that some of the individual defendants make as being in criticism of the actions of 377.
>
> *Therefore, any request by plaintiff Anchor for a finding of contempt against Local 377 or the officers is expressly denied.*

App., Vol. 4, Tab 31, 644-45. (emphasis added). Accordingly, Anchor cannot now be heard to claim that the

Union failed to immediately make every effort to persuade the strikers to return to work between June 11 (the date the strike began) and June 16 (the last date of the first show cause hearing).

There is neither a res judicata nor a collateral estoppel basis for dismissing that portion of Anchor's claim which alleged that the Union had failed to immediately make every effort to persuade the strikers to return to work between June 17 and June 25 when the strike ended. The first show cause hearing was held prior to those dates and the second show cause hearing did not address the question of the Union's action at that time. The court merely examined the activities of individual strikers to determine whether they should have been held in contempt of court.

In holding that Local 377 was entitled to summary judgment on the alternative ground that there was no material issue of fact regarding its breach of the Collective Bargaining Agreement, the District Court misapprehended Anchor's claim and failed to consider whether there was evidence of the breach Anchor was asserting. The District Court stated:

> Absent any evidence that a union instigated, supported, ratified or encouraged an illegal work stoppage the union cannot be held liable for damages. *Lakeshore Motor Freight Co. v. Int'l. Bro. of Teamsters, Warehousemen & Helpers of America, Local Union No. 800,* 483 F. Supp. 1150 (W.D. Pa. 1980). It is clear, therefore, that a union can be held liable for damages due to an unlawful strike only in instances in which it has engaged in some sort of affirmative conduct which supports the unauthorized work stoppage.

App., Vol. 1, 15, D.Ct. Op. at (5). Anchor is not alleging that the Union instigated, encouraged, ratified or supported the unauthorized work stoppage. Rather, Anchor contends that the Union breached the Collective Bargaining Agreement when it failed to immediately make every effort to discourage the strikers.

Accordingly, we remand to the District Court for a determination of whether there is any issue of fact as to whether the Union immediately made every effort to persuade the strikers to return to work between the dates of June 17 and June 25. Although it is possible for this Court to examine the record in the first instance, there is some question about the admissibility of certain depositions offered by Anchor but apparently not received by the District Court until after it had granted Local 377's motion for summary judgment. Accordingly, the District Court is in a better position to review the extensive record and to make the necessary findings of fact.

II.

Anchor also contends on appeal that the District Court abused its discretion in denying Anchor's Rule 56(f) motion to extend the period of discovery so that Anchor could obtain facts essential to defending against Local 377's motion for summary judgment. This contention is without merit. A review of Anchor's motion and supporting brief reveals that it was not a Rule 56(f) motion. Anchor, for and on behalf of all parties to the action, had simply moved for an extension of the discovery deadline because there were depositions outstanding; there was a possibility of settlement; there were interrogatories outstanding; the matter was complex; Teamsters for a Democratic Union, a third-party defendant, was recently added to the action and needed more discovery time;

and the motion for summary judgment had consumed time which the parties would otherwise have spent on normal pretrial discovery efforts.

Accordingly, the District Court did not abuse its discretion in denying Anchor's motion.

III.

Local 377 cross-appeals from that portion of the District Court's order which *sua sponte* dismissed its claim for costs and attorney fees on the ground that the award of attorney fees under the Labor Management Relations Act is discretionary. Local 377 acknowledges that in *Alyeska Pipeline Service Company v. Wilderness Society*, 421 U.S. 240 (1975), the Supreme Court held that, absent statutory authorization, attorney fees are not ordinarily recoverable by prevailing parties in federal litigation. Local 377 further acknowledges that section 301 of the Labor Management Relations Act contains no authorization for the award of attorney fees to the prevailing party in such actions. Local 377 argues, however, that its counterclaim is not within the *Alyeska* prohibition because it is not incidentally seeking to recover costs and attorney fees, but rather, costs and attorney fees are being used as a measure of the actual damages which Local 377 incurred in defending against the lawsuit which Anchor instituted purportedly in violation of a covenant not to sue contained in the Collective Bargaining Agreement. We agree.

In *Scott v. Local Union 377, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 548 F.2d 1244, 1266 (6th Cir.), *cert. denied*, 431 U.S. 968 (1977), this Court stated:

> The Supreme Court in *Alyeska* reaffirmed the traditional American rule that attorney fees are not ordinarily recoverable by the prevailing litigant in federal litigation in the absence of statutory authorization. *We do not read the decision as in any way affecting those cases in which the attorney fees are not an award to the successful litigant in the case at hand, but rather are the subject of the law suit itself.* (emphasis added).

The Union is not precluded by *Alyeska* from recovering costs incurred in defending against an action filed in breach of a covenant not to sue. On remand the District Court should decide whether filing of this action was a breach of the Collective Bargaining Agreement.

Local 377 vigorously argues that the Collective Bargaining Agreement does not create a cause of action against the Local for its failure to immediately make every effort to persuade the unauthorized strikers to return to work. On remand, the District Court must examine the Collective Bargaining Agreement to determine whether the interpretation advanced by Local 377 has merit.

Accordingly, the judgment of the District Court is affirmed in part and the matter is remanded for findings not inconsistent with this opinion.

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

(Filed June 1, 1981)

Case No. C81-21Y

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANCHOR MOTOR FREIGHT, INC.,
Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION NO. 377

v.

TEAMSTERS FOR A DEMOCRATIC UNION

and

THIRD-PARTY DEFENDANTS.

MEMORANDUM OF OPINION

On January 8, 1981 plaintiff, Anchor Motor Freight Inc. (hereinafter Anchor), filed the above-captioned case alleging that defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America Local Union No. 377 (hereinafter union), engaged in an unlawful strike which halted Anchor's car hauling operations at General Motors' Lordstown, Ohio manufacturing plant and thereby caused Anchor to sustain a substantial loss of revenue. On February 23, 1981 the union filed an answer and counterclaim alleging that the action

should be dismissed and that the union was entitled to costs and legal fees expended in defending the case on the ground that the parties' collective bargaining agreement contained a clause which provided that the union could not be held liable for damages by Anchor in the event of an unauthorized work stoppage. On March 3, 1981 the union filed a third-party complaint against the defendant, Teamsters for a Democratic Union (hereinafter TDU), alleging that TDU interfered with and induced a breach of the collective bargaining agreement entered into by Anchor and the union and consequently should be liable for any damages assessed against the union if Anchor's action against it was meritorious. On April 10, 1981 Anchor filed a motion to amend its complaint in order to allege that the union's failure to fairly represent Anchor employees permitted a situation of employee unrest to exist and thereby directly caused the illegal strike. On April 17, 1981 the union filed a motion for summary judgment against Anchor asserting alternatively that: 1) Anchor's suit was barred on the ground of res judicata and/or collateral estoppel and that; 2) the union was entitled to judgment as a matter of law on the ground that the union owed Anchor no duty to use its best efforts to prevent a strike. On April 27, 1981 TDU filed a motion to dismiss the union's third party complaint on the ground of ineffective service of process. For the reasons which follow the union's motion for summary judgment is granted, its counterclaim for costs and attorney's fees is dismissed and Anchor's motion to amend its complaint is denied.[1]

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1. Since the court holds that the union is entitled to judgment as a matter of law against Anchor there is no need to reach the issue of indemnification raised by the union's third party complaint against TDU. Consequently, the only remaining issue raised by the union's third party complaint is tortious interference with contract which is a matter properly cognizable in a state court proceeding. Therefore, the union's third party complaint is dismissed without prejudice.

From June 10, 1979 through June 25, 1979 Anchor employees engaged in an unauthorized work stoppage at General Motors' Lordstown, Ohio manufacturing plant. On June 10, 1979, shortly after the strike began, Anchor commenced civil proceedings for the purpose of enjoining the work stoppage naming as defendants, Local Union No. 377 and certain individual Anchor employees. *See*: *Anchor Motor Freight, Inc. v. Local Union No. 377*, C79-1181Y (N.D. Ohio 1979). Anchor's complaint alleged that all of the named defendants had violated the no-strike provisions of the collective bargaining agreement then in effect by engaging in the work stoppage and requested immediate injunctive relief and that the court retain jurisdiction over the case pending final resolution of the dispute so that Anchor might be given any further relief found necessary.

On June 11, 1979 a temporary restraining order was issued which restrained members of the union from refusing to work in breach of the collective bargaining agreement and from inducing others to join in the work stoppage. On the same date an executive officer of the union met with striking employees, advised them of the court order, and directed them that they should return to work because the work stoppage was in violation of the provisions of the collective bargaining agreement.

On June 12, 1979 the union sent telegrams to all union stewards and committeemen to advise them that the work stoppage was unauthorized, that it had been restrained the previous day by court order and that the stewards and committeemen were to take steps to end the stoppage. The telegrams also apprised the stewards and committeemen that they would be dismissed in the event they failed to follow the union's directive.

On June 12 and 13, 1979 letters were sent by the union to each of its more than 600 members informing them that the work stoppage was a violation of the no-strike provision of the collective bargaining agreement and that it was not authorized by the union. In addition the letters specified that the strike had been enjoined by court order and that union members who did not return to work would be subject to internal union discipline. On the same date, notices, containing information identical to that provided in the letters sent to union members, were posted at the union's offices and meeting hall. These notices also provided that union members were not permitted to use the union's meeting hall for any purpose relating to the strike.

On June 14, 1979 the union's executive board suspended all stewards and committeemen. On the same date union officials visited the picket line in order to attempt to persuade the strikers to return to work. These efforts eventually proved fruitless.

On June 15, 1979 Anchor moved the court for an order to show cause why the defendants should not be held in contempt of the court's order of June 11, 1979 and a hearing was commenced.

On June 17, 1979 the court found that the union had neither violated the court's order nor the collective bargaining agreement. Specifically, the court held as follows:

> It is determined that the Local took all available steps to abide by this Court's order and the contract, and to attempt to persuade the members of Local 377 to return to work immediately.
>
> Also there is no evidence that Local 377 or the officers either initiated, fostered, or in any way encouraged or supported the work stoppage.

The court, however, did find the individual defendants to be in contempt of the temporary restraining order. Consequently, the individual defendants were assessed fines of $500, and instructed that they could purge themselves of both the contempt and the fines by returning to work. Notwithstanding the court's contempt order the work stoppage continued. Thus, on June 20, 1979 Anchor filed a second motion to show cause. The court convened another hearing and on June 23, 1979 the individual defendants were once again held in contempt. Varying sanctions were imposed on these individuals depending upon their level of involvement in the unauthorized work stoppage. Leaders of the stoppage were given a choice of being jailed and paying fines or returning to work. On June 25, 1979 the work stoppage was terminated and on September 20, 1979 Anchor filed a motion to dismiss the action which the court granted with prejudice on September 28, 1979.

In its motion for summary judgment the union claims that Anchor's action is barred by the doctrines of res judicata and/or collateral estoppel on the ground that the instant suit is premised on the same alleged union misconduct that was at issue in the first proceeding. In opposing the union's motion Anchor asserts that the effect of a clause in the applicable collective bargaining agreement, providing for arbitration of damage claims against the union prior to the institution of a civil suit, effectively prevented Anchor from raising its claim for damages at the time it filed for injunctive relief and, therefore, the doctrines of res judicata and/or collateral estoppel have no application to the instant suit. For the reasons which follow this court holds that Anchor's contentions are without merit and that the instant suit is barred by the doctrine of res judicata.

As a general rule a union may not be held liable in damages either when its members stage an unauthorized

strike or, when it fails to use its "best efforts" to curtail one. *Southern Ohio Coal Co. v. United Mine Workers of America,* 551 F.2d 695 (6th Cir.), *cert. denied,* 434 U.S. 876, 98 S.Ct. 227 (1977); *North American Coal Corp. v. Local Union No. 2262, United Mine Workers of America,* 497 F.2d 459 (6th Cir. 1974). Indeed, the United States Supreme Court has recently held that there is no duty implied at law for an international union or a regional subdivision thereof to use all reasonable means to prevent and/or end an unauthorized strike. *Carbon Fuel Co. v. United Mine Workers of America,* 444 U.S. 212, 100 S.Ct. 410 (1979). A union may, however, agree to assume a greater responsibility for ending illegal strikes than that imposed by law. *United Steelworkers of America v. Lorain, A Division of Koehring Co.,* 616 F.2d 919 (6th Cir. 1980). In the instant case the union did assume such a responsibility. Article 7, Section 2(a) of the parties' collective bargaining agreement provides in pertinent part:

> In the event of such unauthorized work stoppage or picket line, etc., in violation of this Agreement, *the Local Union shall immediately make every effort to persuade the employees to commence the full performance of their duties* and shall immediately inform the employees that the work stoppage and/or picket line is unauthorized and in violation of this Agreement. (emphasis added)

Thus, the question presented by the instant case is whether Anchor may maintain the present action for damages in light of the prior proceeding for injunctive relief. The court holds that this issue must be resolved against Anchor as a matter of law.

Even if a union assumes a responsibility to use its best efforts to prevent and/or terminate an unauthorized work stoppage it can avoid civil liability for an illegal

strike by a credible demonstration of disapproval of the actions of its members. *United States Steel Corp. v. United Mine Workers of America*, 589 F.2d 363 (5th Cir. 1979). Absent any evidence that a union instigated, supported, ratified or encouraged an illegal work stoppage the union cannot be held liable for damages. *Lakeshore Motor Freight Co. v. Int'l. Bro. of Teamsters, Warehousemen & Helpers of America, Local Union No. 800*, 483 F. Supp. 1150 (W.D. Pa. 1980). It is clear, therefore, that a union can be held liable for damages due to an unlawful strike only in instances in which it has engaged in some sort of affirmative conduct which supports the unauthorized work stoppage. Since it was held in the prior proceeding for injunctive relief, that the union took all available steps to abide by the court's order and the collective bargaining agreement and did not initiate, foster, or in any way support or encourage the unauthorized work stoppage, Anchor is precluded from relitigating the union's liability in damages for just such actions in the instant case by the doctrine of res judicata.[2]

The doctrine of res judicata provides that a judgment on the merits in a prior suit acts as a bar to a second suit involving the same parties or their privies based on the same cause of action. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 99 S. Ct. 645 (1979); *Lawlor v. National Screen Services Corp.*, 349 U.S. 322, 75 S. Ct. 865 (1955). Changing the relief requested from equitable to damages does not avoid the doctrine because its focus is on the nature of the cause of action alleged rather than the

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2. Since it was held in the previous proceeding that the union did not instigate, encourage, ratify or support the unauthorized work stoppage, Anchor's assertion in the proposed amendment to its complaint that the union allowed a situation of employee unrest to exist and thereby caused the work stoppage has previously been litigated. Consequently, Anchor's motion to amend its complaint is denied on the ground of res judicata as well.

nature of the relief which may be attainable, *Walworth Co. v. United Steelworkers of America,* 443 F. Supp. 349 (W.D. Pa. 1978). Consequently, a party is barred from subsequently seeking damages in a suit when a court previously confronted with a claim for equitable relief would have been required to rule on a claim for damages had it been presented. *Melaro v. Mezzanote,* 352 F.2d 720 (D.C. Cir. 1965).

Anchor asserts that the instant case does fall within the realm of this general principle because the effect of the clause in the parties' collective bargaining agreement, providing that Anchor arbitrate any damage claim against the union for breach of its assumed duty to use its best efforts to prevent and/or terminate unlawful strikes, essentially prohibited Anchor from presenting its claim for damages in the same proceeding in which it requested injunctive relief. There is no merit to Anchor's contention. It is clear that a suit for injunctive relief is preclusive of a later suit for damages premised on the same cause of action on the ground of res judicata, *Mirin v. Nevada,* 547 F.2d 91 (9th Cir.), *cert. denied,* 432 U.S. 906, 97 S. Ct. 2952 (1976), only when the claim sued upon in the subsequent suit was mature and the court possessed subject matter jurisdiction to decide the claim at the time of the former judgment on the merits. If such was not the case the plaintiff in the subsequent proceeding would be permitted to split his cause of action without meeting the bar of res judicata. *Stokes v. Twin City Motors, Inc.,* 490 F. Supp. 742 (E.D. Ark. 1980). This exception, however, does not save Anchor's claim in the instant case because Anchor would only be permitted to split its cause of action in the event the union was found to have encouraged, ratified or supported the unauthorized strike in the first proceeding. If the court had made such a finding Anchor would then be contractually bound to arbitrate the union's liability for damages and would sub-

sequently have the right to review in a civil proceeding. Since the union, however, was not found to have committed any act in support of the unauthorized strike in the first proceeding the factual issue underlying Anchor's claim for damages has already been litigated and thus, its claim in the instant case is barred. There can no doubt about this result. In the prior proceeding in which Anchor requested injunctive relief the union was found not to have initiated, encouraged or fostered the unauthorized work stoppage. Subsequent to the return of the union members to work Anchor dismissed its suit with prejudice. The dismissal with prejudice operated as a complete adjudication of the issues presented by the pleadings and is a complete bar to a further action between the parties. *England v. Automatic Canteen Co. of America,* 349 F.2d 988 (6th Cir. 1965), *cert. denied,* 383 U.S. 925, 86 S. Ct. 928 (1966); *Smoot v. Fox,* 340 F.2d 301 (6th Cir. 1964). *See also: Walworth Co. v. United Steelworkers of America,* 443 F. Supp. 349 (W.D. Pa. 1978), a case with facts very similar to those presented by the instant case, in which the court held that an employer's subsequent suit for damages allegedly caused by an illegal work stoppage was barred by the application of the doctrine of res judicata when the suit was based on the same cause of action as a prior suit between the same parties in which the plaintiff employer, as a result of the work stoppage, sought a temporary restraining order against the defendant unions, union officers and bargaining unit employees which culminated in a settlement and a dismissal of the action with prejudice subsequent to the employees return to work.

Anchor's final contention is that since the court's findings concerning union conduct occurred midway through the unauthorized strike, the holding cannot be considered res judicata as to any union activity which took place subsequently. This contention is frivolous. It is clear

that the union attempted almost every action conceivable in an attempt to persuade the striking employees to return to work, thereby fulfilling its contractual obligation. It is equally clear that the union vehemently opposed the strike. Anchor submitted no evidence either in the prior proceeding for injunctive relief or, in the instant case which would prove that the union instigated, encouraged or ratified the illegal strike. Consequently, this court holds there is no genuine issue of material fact regarding the union's conduct during the final few days of the unauthorized work stoppage. Indeed, in a similar case, the Sixth Circuit Court of Appeals recently held that the mere fact that a collective bargaining agreement provides that a union shall actively discourage any interruption of work in violation of the agreement does not provide a basis for holding a union liable for a strike which violates a no-strike clause of the agreement due to a union's inactivity during the final two days of the strike. *United Steel Workers of America v. Lorain, A Division of Koehring Co.*, 616 F.2d 919 (6th Cir. 1980).

Accordingly, the court holds that there is no genuine issue of material fact and that the union is entitled to summary judgment as a matter of law.[3] *See: Smith v. Hudson*, 600 F.2d 60 (6th Cir.), *cert. denied*, 444 U.S. 996, 100 S. Ct. 495 (1979); *Bryant v. Commonwealth of Kentucky*, 490 F.2d 1273 (6th Cir. 1974); *Daily Press Inc. v. United Press Int'l.*, 412 F.2d 126 (6th Cir.), *cert. denied*, 396 U.S. 990, 90 S. Ct. 480 (1969).

IT IS SO ORDERED.

/s/ JOHN M. MANOS
United States District Judge

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3. Since the award of attorney's fees under the Labor Management Relations Act is discretionary, the union's counterclaim for such fees is dismissed. *See: Nashville Newspaper Printing Pressmen's Union Local 50 v. Nashville Printing Corp.*, 518 F.2d 351 (6th Cir. 1975).

JUDGMENT ENTRY OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

(Filed June 1, 1981)

Case No. C81-21Y

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANCHOR MOTOR FREIGHT, INC.,
Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION NO. 377

v.

TEAMSTERS FOR A DEMOCRATIC UNION

and

THIRD-PARTY DEFENDANTS.

ORDER

Pursuant to the Memorandum of Opinion issued in the above-captioned case on this date the defendant's motion for summary judgment is granted, its counterclaim for attorney's fees and costs is dismissed, the plaintiff's motion to amend its complaint is denied and the defendant's third party complaint is dismissed without prejudice.

IT IS SO ORDERED.

/s/ JOHN M. MANOS
United States District Judge

JUDGMENT ENTRY OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed February 25, 1983)

Nos. 81-3396/3410

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ANCHOR MOTOR FREIGHT, INC.,
Plaintiff-Appellant,
Cross-Appellees,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc.,
Defendant-Appellee,
Cross-Appellant,

vs.

TEAMSTERS FOR A DEMOCRATIC UNION, and STEPHEN KINDRED,
Third-Party Defendants-Appellees.

Before: KENNEDY and WELLFORD, *Circuit Judges;* and BROWN, *Senior Circuit Judge.*

JUDGMENT

ON APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment

of the said District Court in this case be and the same is hereby affirmed in part and the case is remanded for findings not inconsistent with the opinion of this Court.

Each party to bear its own costs on this appeal.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN/CG
Clerk